



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Roland Beaudry
P.O. Box 618
Pelham, NH 03076

Re: 132 Dorrs Corner Rd., Ossipee, NH

ADMINISTRATIVE ORDER
No. WMD 04-12

October 18, 2004

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Roland Beaudry pursuant to RSA 147-A:14 and RSA 149-M:15, I. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Roland Beaudry is an individual having a mailing address of P.O. Box 618, Pelham, NH 03076-0618.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 147-A, DES regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100 – 1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100 – 300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
3. Roland Beaudry is the owner of land at 132 Dorrs Corner Road, Ossipee, NH, more particularly described in a deed recorded in the Carroll County Registry of Deeds at Book 2216, Page 252, and identified on Ossipee Tax Map 11 as Lot 50 ("the Site").
4. On July 30, 1998, DES received a complaint alleging that junk automobiles were leaking at the Site. The complaint also alleged that there were drums with unknown contents at the Site.
5. On September 23, 1998 and June 16, 1999, DES personnel investigated the complaint by conducting an inspection of the Site ("Inspection"). The purpose of the Inspection was to determine Roland Beaudry's compliance status relative to RSA 147-A, RSA 149-M, the Hazardous Waste Rules, and the Solid Waste Rules.

6. During the Inspection, DES personnel observed the following

- a. Two unlabeled 55-gallon drums of used oil behind the garage; one of which was not sealed;
- b. One unlabeled and unsealed 275-gallon tank of used oil behind the garage;
- c. One unlabeled 55-gallon drum of antifreeze behind the garage;
- d. Several small areas of stained soil;
- e. Construction and demolition debris over the embankment;
- f. Two separate piles of tires; one pile consists of approximately 200 tires and the other pile consists of approximately 1,000-1,500 tires; and
- g. A large pile of insulation in the woods.

7. As a result of inspections conducted on September 23, 1998, and June 16, 1999, DES issued Letter of Deficiency No. WMD 99-16 to Roland and Sharon Beaudry on July 26, 1999, advising them to cease operating an unpermitted solid waste facility; remove all solid waste at the Site to a permitted solid waste facility; store all tires at the Site in accordance with the Solid Waste Rules; conduct a hazardous waste determination on the drums at the Site; remediate oil contaminated soil; label containers of used oil; and seal containers of used oil.

8. On October 18, 1999, DES personnel conducted a follow-up inspection of the Site. DES personnel observed a chain across the driveway and a private property sign and a no trespassing sign. DES personnel did not enter the Site.

9. On July 19, 2000, DES personnel conducted a follow-up inspection of the Site. No changes were observed at the Site since the previous inspection conducted on July 16, 1999.

10. On December 7, 2001, the Site was purchased by Louis Saab. DES conducted follow-up inspections on August 15, 2002, October 25, 2002, April 16, 2003, and September 10, 2003. DES personnel observed that Mr. Saab made progress in cleaning up the Site.

On October 2, 2003, Roland Beaudry purchased the Site back from Mr. Saab.

12. On August 3, 2004, DES personnel conducted a follow-up inspection of the Site ("August 2004 Inspection").

3. During the August 2004 Inspection, DES personnel observed the following:

- a. A burn pile on the north side of the garage which included painted wood and plywood;
- b. Several areas of stained soil on the north side of the garage and at the west side of the garage which appears to be stained with oil;
- c. Two 275-gallon fuel tanks; one of which is empty and the other has unknown contents;
- d. Fiberglass insulation along the edge of the woods on the north side of the Site near the garage;
- e. The remains of a mattress and pickup camper in the woods on the north side of the Site;
- f. Approximately 20 propane tanks which contain residual propane stored in the cargo area of a station wagon;

- g. Two separate piles of tires; one pile consists of approximately 200 tires and the other pile consists of approximately 1,000-1,500 tires. The piles are located at the west end of the clearing in the woods. The tire piles are not accessible and do not have berms around them;
 - h. A pile of household garbage and bundled newspaper at the west end of the clearing at the edge of the woods;
 - i. Piles of car parts and scrap metal along the south side of the clearing; and
 - j. Furniture, mattresses, demolition debris, and white goods in the woods adjacent to the shed.
14. Env-Wm 402.06(c) classifies used oil as a New Hampshire generic industrial process waste (hazardous waste) with the hazardous waste number of NH01.
15. RSA 147-A: 2, VI defines “[hazardous waste] generator” as “any person who owns or operates a facility where hazardous waste is generated.”
16. Roland Beaudry is a generator of hazardous waste as defined by RSA 147-A:2, VI.
17. Env-Wm 502.01 requires that all generators of waste determine if their waste is a hazardous waste. Waste determined to be hazardous must be handled in accordance with the Hazardous Waste Rules.
18. As of the date of the August 2004 Inspection, a hazardous waste determination has not been done on the contents of the 275-gallon fuel tank identified in Paragraph C.13.
19. Env-Wm 513.02(a) requires that hazardous waste generators “...shall be responsible for the cleanup of any hazardous waste discharge or any discharge of a material which, when discharged, becomes a hazardous waste.”
20. The oil stained soil identified in Paragraph C.13 represents a discharge of hazardous waste that requires the generator to clean up the discharge.
21. RSA 149-M:4, XXII defines “solid waste” as “any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material.”
22. RSA 149-M:4, XXI defines “refuse” in part, as “any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance.”
23. Env-Wm 102.42 defines “construction and demolition debris” in part, as “non-putrescible waste building materials and rubble which is solid waste resulting from the construction, remodeling, repair or demolition of structures or roads. The term includes but is not limited to, bricks, concrete and other masonry materials, wood, wall coverings, plaster, dry wall, plumbing, fixtures, non-asbestos insulation or roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes and electrical wiring and components, incidental to any of the above and containing no hazardous liquid or metals. The term does not

include asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, furniture, appliances, tires, drums and containers, and fuel tanks.”

24. The scrap tires, old furniture, mattress, fiberglass insulation, propane tanks, demolition debris, partially burned plywood, partially burned painted wood, white goods, household garbage, car parts, and scrap metal observed by DES personnel at the Site are solid wastes as defined by RSA 149-M:4, XXII.

25. RSA 149-M:4, IX defines a “[solid waste] facility” as “a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste.”

26. The Site constitutes a “solid waste facility” as defined by RSA 149-M:4, IX.

27. Env-Wm 102.116 defines “owner” as “a person who owns a facility or part of a [solid waste] facility.”

28. Mr. Beaudry is the owner of a solid waste facility.

29. RSA 149-M:9, I states that “No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES].”

30. A review of DES files shows that Mr. Beaudry has not applied for or received a permit to operate a solid waste facility at any New Hampshire location.

31. Env-Wm 2605.02(b) requires tires that are stored outdoors to be stored in one of the following manners:

- a. In covered trailers;
- b. In transfer containers; or
- c. In stockpiles as follows:
 - (1) The diameter of the piles shall not exceed 25 feet;
 - (2) The height of the piles shall not exceed 15 feet;
 - (3) Fire lanes no less than 25 feet in width shall be maintained around each pile;
 - (4) Each pile shall have a berm with a minimum height of 12 inches constructed around its perimeter capable of containing any pyrolytic oils or other liquids generated by fire; and
 - (5) The stockpiling facility shall have equipment, cover material and other supplies, including water, sufficient to control a fire until the nearest fire company capable of extinguishing the fire arrives.

32. The tires observed at the Site during the August 2004 Inspection were not stored in accordance with Env-Wm 2605.02(b).

D. DETERMINATION OF VIOLATIONS

1. Roland Beaudry has violated RSA 149-M:9, I by operating an unpermitted solid waste facility.
2. Roland Beaudry has violated Env-Wm 502.01 by failing to conduct a hazardous waste determination on the contents of the 275-gallon fuel tank.
3. Roland Beaudry has violated Env-Wm 513.02(a) by failing to remediate a discharge of hazardous waste.
4. Roland Beaudry has violated Env-Wm 2605.02(b) by failing to comply with tire storage standards.

E. ORDER

Based on the above findings, DES hereby orders Roland Beaudry as follows

- 1 **Immediately** cease operating an unpermitted solid waste facility.
2. **Within 30 days** the date of this Order, store tires in accordance with Env-Wm 2605.02(b) of the New Hampshire Solid Waste Rules, until such time as the tires can be removed to a permitted solid waste facility.
3. **Within 60 days** the date of this Order, remove all solid waste at the Site to a permitted solid waste facility.
4. **Within 30 days** the date of this Order, perform a hazardous waste determination as specified in Env-Wm 502.01 on the items identified in Paragraph C.13. Submit the results along with any supporting data (i.e. material safety data sheets, chemical analyses, or process knowledge used to make the hazardous waste determinations to DES. A complete hazardous waste determination will require you to determine if the waste is a federal hazardous waste. Waste determined to be hazardous must be handled in accordance with the Hazardous Waste Rules.
5. **Within 30 days** the date of this Order, containerize all stained soil and dispose of the stained soil at a facility permitted to accept it.
6. **Within 45 days of receiving hazardous waste determination results**, remove all hazardous waste/used oil at the Site to a facility or facilities permitted to accept such wastes in accordance with the Hazardous Waste Rules.
7. Submit one written status report to DES by **December 30, 2004**, certifying that corrective measures have been implemented and compliance achieved. Include in the report supporting documentation describing those measures taken to achieve compliance, copies of any written plans or proceedings developed, and **copies of disposal receipts.**

8. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Michael Galuszka
NHDES
80 Glen Road
Gorham, NH 03581
Telephone: (603) 466-5389
e-mail: mgaluszka@des.state.nh.us

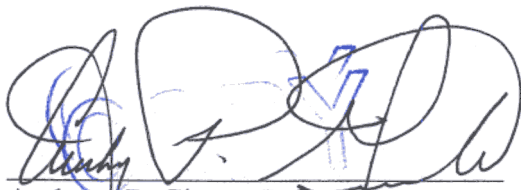
F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Roland Beaudry of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 147-A and RSA 149-M provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Roland Beaudry remains obligated to comply with all applicable requirements, in particular RSA 147-A and RSA 149-M. DES will continue to monitor Roland Beaudry's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Carroll County Registry of Deeds so as to run with the land.



Anthony P. Giunta, P.G., Director
Waste Management Division



Michael P. Noon, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7000 0600 0023 9932 1585

cc: DB/FILE/ORDER
Gretchen R. Hamel, DES Legal Unit Administrator
Public Information Coordinator, DES
Jennifer Patterson, Sr. Assistant Attorney General
Town Clerk, Ossipee, NH
Carroll County Registry of Deeds